



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4320 OF 2024

1. Nanasaheb Hilal Bhosale
Age: 58 years, Occu.: Retired (Peon),
R/o. Secondary Ashram School,
Talban Tanda,
Tal. Bhadgaon, Dist. Jalgaon.
2. Harshal Vitthal Patil,
Age: 39 years, Occu.: Service (Jr. Clerk),
R/o. Secondary Ashram School,
Talban Tanda,
Tal. Bhadgaon, Dist. Jalgaon.
3. Nilesh Prabhkar Bagul,
Age: 40 years, Occu.: Service (Peon),
R/o. Secondary Ashram School,
Talban Tanda,
Tal. Bhadgaon, Dist. Jalgaon.
4. Madhuri Hansraj Patil,
Age: 39 years, Occu.: Service (Asst. Cook)
R/o. Secondary Ashram School,
Talban Tanda,
Tal. Bhadgaon, Dist. Jalgaon.
5. Suvarna Madhavrao Patil
Age: 36 years, Occu.: Service (Cook),
R/o. Secondary Ashram School,
Talban Tanda,
Tal. Bhadgaon, Dist. Jalgaon.
6. Poonam Sambhaji Patil
Age: 43 years, Occu.: Service (Lab Asst.),
R/o. Secondary Ashram School,
Talban Tanda,
Tal. Bhadgaon, Dist. Jalgaon

.. PETITIONERS

VERSUS

1. The State of Maharashtra
Through, Principal Secretary,

Other Backward Bahujan Welfare
Department, Mantralaya,
Mumbai-32.

2. The Director of Other Backward
Bahujan Welfare Department, Maharashtra
State, Pune.
3. Regional Deputy Commissioner,
Other Backward Bahujan Welfare
Department Nasik, Region Nasik.
4. Assistant Commissioner Other Backward
Bahujan Welfare Department, Jalgaon
5. Head Master,
Secondary Ashram School,
Talban Tanda, Tal. Bhadgaon,
Dist. Jalgaon

.. RESPONDENTS

...
Mr. Chandrakant P. Patil h/f Mr. Paresh B. Patil (Borse), Advocate for
the petitioners.
Mrs. R. P. Gour, AGP for respondent Nos.1 to 4 – State.

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

DATE : 25th APRIL, 2024.

JUDGMENT [Per Smt. Vibha Kankanwadi, J.] :-

. Rule. Rule made returnable forthwith. Heard learned Advocates
for the appearing parties finally by consent.

2. Present petition has been filed by the petitioners for following
reliefs :-

“B) By appropriate Writ in the nature of Certiorari or
any other Writ of like nature or by appropriate orders

and directions, impugned communication letters dated 19.03.2023 and 28.03.2024 issued by the respondent No.4 authority may kindly be quashed and set aside.

C) By appropriate Writ in the nature of Mandamus or any other Writ of like nature or by appropriate orders and directions, the respondents may kindly be directed to declare that, the benefits of Assured Career Progress Scheme (in short ACPS), which is applicable to the employees of Group 'C' and 'D' non-teaching staff of the aided Private School in the State, under the Government Resolution dated 30th April, 1998, as modified from the time to time applicable to the non-teaching staff of the same category in private aided Schools.

D) By appropriate Writ of like nature or by appropriate orders and directions, the respondents may kindly be directed to grant the benefits of Time Bound Promotional Pay Scales to the Petitioners post within period of two months under Assured Career Progress Scheme which is applicable to the employees of Group 'C' and 'D' non-teaching staff of the VJNT aided Private Schools under Government Resolution dated 30th April, 1998, on the ground of the petitioners have been completed 12 years qualifying services, from the date of their initial appointment."

3. Learned AGP waives notice for respondent Nos.1 to 4. In view of the fact that the benefit of time bound promotion as per the Assured Career Progress Scheme (A.C.P.S.) has been rejected by respondent No.4, there is no necessity to issue notice to respondent

No.5. So also, the petitioners state that respondent No.5 is the formal party.

4. The fact which is not in dispute that the petitioners are the employee of respondent No.5 Aided School as a non teaching staff falling in 'C' and 'D' category.

5. Learned Advocate for the petitioners has relied on the decision of this Court at Principal Seat in **Writ Petition No.2358 of 2013 and companion matters (Kiran Namdeo Shinde and others Vs. State of Maharashtra, Through Secretary, Social Welfare Department and others, decided on 21.09.2013)**, so also the decision of this Court in **Writ Petition No.2690 of 2022 (Vakil Sahebrao Jadhav (Died), Through his L.Rs and others Vs. State of Maharashtra and others, decided on 23.11.2022)** and the decision of this Court in **Writ Petition No.13234 of 2022 (Vitthal Dagadu Chavhan Vs. State of Maharashtra, Through its Secretary and others, decided on 22.12.2022)**, wherein it was held that "the ACPS scheme is made applicable to the Non Teaching Staff of group 'C' and 'D' of the aided private schools in the State under the Government Resolution dated 30.04.1998, as modified from time to time shall be available to the non teaching staff of the same category in the private aided Ashram Schools."

The learned Advocate for the petitioners submits that in spite of these clear pronouncements of this Court, respondent No.4 by

impugned communications/orders dated 19.03.2024 and 28.03.2024 says that the scheme is not applicable to the Ashram Schools for V.J.N.T. Therefore, the said impugned order deserves to be set aside.

6. Learned AGP further points out that since necessary documents were not forwarded i.e. the copy of the confidential reports and date on the certificate, it appears that the said proposal has been returned back.

7. The impugned orders appear to have been passed on two counts. One that the concerned officer was under the assumption that there is no Government Resolution or policy to make the A.C.P.S. Scheme applicable to non teaching employees of Ashram Schools of V.J.N.T. and the second ground is that certain documents were not forwarded.

8. It appears that the first ground is in ignorance of the judgment passed by this Court in **Kiran Namdeo Shinde (Supra)**. It cannot be said that the Ashram schools referred in the said decision was restricted to one category. In fact, it is in respect of the Ashram Schools, which are aided and run by the private institutions. In paragraph No.21 of the decision in **Kiran Namdeo Shinde (Supra)**, following order is passed :-

"21. Hence, we dispose of the petitions, by passing the following order :-

(i) We declare that the benefit of ACPS, which is applicable to the employees of Group 'C' and 'D' non-teaching staff of the aided Private Schools in the State under the Government Resolution dated 30th April, 1998 as modified from time to time shall be available to the non-teaching staff of the same category in the private aided Ashram Schools;

(ii) The appropriate Authority appointed by the State Government shall examine the individual cases of the petitioners for deciding whether they satisfy the criteria laid down for availability of the benefit of ACPS to the private aided Government Schools under the Government Resolution dated 30th April, 1998 as modified from time to time.

(iii) We make it clear that the petitioners will be entitled to the benefit of the said scheme, provided they satisfy the eligibility criteria which is prescribed for the corresponding non-teaching staff of the private aided Schools;

(iv) We grant time of six months to the respondents to scrutinize the cases of the petitioners and to consider whether they are eligible for the benefit of ACPS;

(v) To those petitioners who are found eligible, the benefit shall be extended, as expeditiously as possible;

(vi) Petitions are disposed of on above terms."

9. Thus, it can be seen that a declaration has been given in paragraph No.21 (i) of the said judgment/order, which is *in rem* and the other clauses were in respect of relief granted *in personam* i.e. restricted to or connected to the petitioners in the said petitions. The same decision has been then followed in **Vakil Sahebrao Jadhav**

(Supra) and **Vitthal Dagadu Chavan (Supra)**. Even in **Kiran Namdeo Shinde (Supra)** it is further observed by this Court that only on the basis of purported ground of financial crunch, the approach of the State Government of discriminating between the non teaching staff of aided Ashram Schools and non teaching staff of aided Private Schools is unjustified. Denial of benefit of A.C.P.S. amounts to discrimination, which is hit by the rights guaranteed under Articles 14 and 16 of the Constitution of India. The parity was considered. Therefore, the impugned orders cannot be sustained on the ground that there is no policy with the State Government to grant A.C.P.S. to the non teaching staff of the aided Private Ashram schools for VJNT.

10. As regards the observations in respect of shortfall of documents, certainly the said authority has right to verify the proposal, but if there are shortfalls, then the said authority cannot reject the proposal, but it should get the necessary documents from the school/management and, therefore, the rejection on that ground is also not justified when respondent No.4 had failed to exercise powers and calling upon respondent No.5 to cure the defects by getting the documents.

11. Another fact to be noted is that if respondent No.4 was of the opinion that there is no such policy of the Government to grant A.C.P.S. to the petitioners, then the proposal could have been denied only on that count. The second ground ought not to have been

considered at all. That means, the scrutiny ought not to have been done.

12. In view of the above-said facts, **we allow the writ petition** with following directions :-

I) Respondent authorities would be at liberty to examine the case of the petitioners for verifying as to whether the petitioners satisfy the criteria laid down for claiming the A.C.P.S. benefits, after completing 12 years in the private/aided Ashram schools in the light of Government Resolution dated 30.04.1998, which has been modified by succeeding Government Resolutions from time to time.

II) The verification should be done within a period of one month from today. After concluding the exercise of verification, the amounts based on entitlement of the petitioners would be paid within a period of six months from taking decision upon such verification.

III) In the event the authority arrives at a conclusion that the petitioners are not entitled, then a reasoned order would be passed and the same would be communicated to the petitioners within a period of 15 days from the date of the decision.

IV) Thereafter, the petitioners would be at liberty to challenge the said decision by resorting to the remedy permissible under law.

13. Rule is made absolute in the above terms.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm